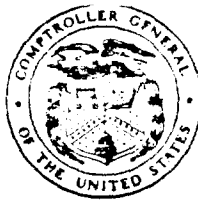


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-208167

DATE: October 29, 1982

MATTER OF: Peter A. Tomaino, Inc.

DIGEST:

1. Grounds of protest concerning comparative cost evaluation of offers for office space to be leased by Department of Agriculture are untimely since filed with GAO more than 10 days after protester received initial adverse agency action on similar protest earlier filed with Agriculture.
2. Ground of protest concerning Agriculture's cost evaluation of offerors' proposed building occupancy dates for office space requirement appears to be untimely since filed more than 10 days after basis of protest was apparently known. Even if ground of protest should be regarded as timely, however, objection lacks merit since advice, which protester admittedly gave Agriculture employee, could have reasonably led Agriculture to evaluate cost effect of protester's proposed occupancy date as it did.

Peter A. Tomaino, Inc., protests the United States Department of Agriculture's award of a contract to Mountain Distributing Company (Mountain) under negotiated solicitation No. R5-06-82-13. The contract is for office space to be used as the Lassen National Forest Supervisor's office in Susanville, California. The protester requests that GAO reverse the award and that the leasing requirement, be awarded to the protester.

The protest is dismissed because it is untimely filed with our Office.

In a letter to the procuring agency dated June 4, 1982, the protester objected to the agency's acceptance of Mountain's offer, which proposed relocation of the office's

023311

operations into a single renovated building. The protester argued that its offer, which was based on the continued operation of two separate offices, one of which was owned by the protester, represented the lowest cost to the Government. In support of its conclusion, the protester questioned several cost adjustments used by Agriculture in comparing proposed costs. Specifically, the protester questioned cost adjustments added to its offer by Agriculture for extra costs which Agriculture believed it would incur by maintaining two separate office locations under the protester's offer. The protester also objected to what it considered to be inadequate, upward cost adjustments made to Mountain's offer and complained that mathematical errors had been made in the cost evaluation.

Finally, the protester maintained that the agency's relocation would violate national urban policy by creating more surplus office space in Susanville.

The agency responded to the protest by a June 10, 1982, letter, which was received by the protester on June 16, 1982. In the letter, the agency, in effect, reaffirmed its decision to accept Mountain's offer.

By letter dated June 21, 1982, the protester again sought resolution of its protest with the agency. Essentially, the protester repeated its earlier arguments about the merits of its "two-site" cost offer as compared with that of the selected "one-site" offer. One new argument was raised, however, concerning Agriculture's decision not to assess cost penalties for "late occupancy" in any offer. Agriculture did not assess cost penalties because "all offerors indicated an extension of time." Nevertheless, the protester insisted that its offer was based on meeting the stated occupancy date so that, in the protester's view, cost penalties should have been assessed against the other offers.

In reply to the second letter, the agency advised the protester by letter of June 25 that its June 10 letter reflected the agency's reasons for accepting Mountain's offer. The agency further advised the protester of its right to protest the decision to GAO. Subsequently, on July 7, 1982, the protester filed this protest with our Office.

The protester's June 4 protest to Agriculture essentially covered the grounds of the present protest with the exception of the argument concerning "late occupancy." Therefore, as to all issues save the "late occupancy" issue,

the present protest must be considered to be untimely filed because it was received in our Office more than 10 days after the protester received (on June 16) Agriculture's initial adverse agency action on the protest. See 4 C.F.R. § 21.2(a) (1982).

Agriculture's June 25 letter noted that the protester had a right to protest to our Office. To the extent the protester interpreted this letter as a statement that any subsequent protest to our Office would be considered timely, we regret that this implication may have been given and that Agriculture did not earlier advise the protester of its right to protest here. Nevertheless, we cannot waive our timeliness requirements.

As to the "late occupancy" issue, it appears that the protester knew or should have known of that basis of protest as of the date of its June 4 letter to Agriculture. In the June 4 letter, the protester admitted detailed knowledge of the worksheets on which the late occupancy evaluation was shown. However, this basis of protest was first raised in the protester's June 21 letter. Consequently, this ground of protest is also untimely filed. See 4 C.F.R. § 21.2(b)(2) (1982).

Even if the late occupancy issue should, nevertheless, be considered timely filed, it is our view that the protester has also admitted that it may have led Agriculture reasonably to understand that modifications to the protester's building (so as to permit occupancy under its 2-site leasing offer) would not take place until December 1982, or past the October 1, 1982, required occupancy date. Specifically, the protester states that it told an Agriculture employee that the "[building] modifications would surely be completed by December 1982." In this circumstance, the postaward statement of the protester that it "did then commit, and hereby confirm[s], that our offer was to provide [the needed space] on October 1, 1982," does not affect the validity of the cost evaluation or the award to Mountain.

Therefore, the protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel